

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
WASHINGTON, D.C.

DEPT OF TRANSPORTATION  
RECEIVED

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Motion of

COLGAN AIR, INC.

for confidential treatment of documents  
under Rule 39 of the Rules of Practice  
of the Department of Transportation  
14 C.F.R. 302.39

Docket OST 08 0357

MOTION OF  
COLGAN AIR, INC.  
FOR CONFIDENTIAL TREATMENT PURSUANT TO RULE 39

All communications with respect to this document are to be  
forwarded to:

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May 11, 2009

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MOTION OF  
COLGAN AIR, INC.  
FOR CONFIDENTIAL TREATMENT PURSUANT TO RULE 39

Colgan Air, Inc. ("Colgan") hereby submits this motion to withhold from public disclosure certain information contained in Colgan's Form 41, Schedule B-7, for the quarter ending March 31, 2009 submitted herewith under seal, pursuant to Rule 39 of the *Rules of Practice of the Department of Transportation* ("DOT"). Colgan seeks to be treated as confidential information relating to transactions or modifications of transactions it has entered into with Bombardier, Inc., and all previously submitted requests. Colgan believes that information contained in its Scheduled B-7 and Schedule B-43 report is confidential and commercially-sensitive data, the premature public disclosure of which would cause substantial injury to Colgan. Colgan requests that the data at issue be withheld from public disclosure for a period of ten (10) years. In support of this motion, Colgan states as follows:

1. The data filed today is pursuant to Part 241 of the DOT's economic regulations. The great majority of Colgan's Part 241 filings are submitted as public documents, available for

inspection and copying by members of the public, including foreign and domestic competitors of Colgan and competitors of Colgan's aircraft and engine suppliers.

2. A small portion of the information required to be filed pursuant to Part 241 is of a commercially-sensitive and confidential nature. In this case, certain price and cost data contained in Colgan's Schedule B-7 and Schedule B-43 is highly sensitive and confidential. Public disclosure of these data would have an adverse financial impact on Colgan. Withholding the data from public disclosure is consistent with the Freedom of Information Act (5 U.S.C. 552) (the "FOIA"), and precedents thereunder.

3. The reasons why these cost and price data are commercially sensitive to a degree that requires they be withheld from public disclosure are as follows:

- (a) Disclosure of the data diminishes competition among the major aircraft manufacturers; and
- (b) Disclosure of the data impairs competition in the international arena, because United States airlines are required to reveal major elements of their cost structures when their foreign competitors are not.

4. Accordingly the data should be withheld from public disclosure by the DOT, pursuant to Exemptions 3 and 4 of the FOIA (5 U.S.C. 552(b) (3) and (4)).

5. Under Exemption 3 of the FOIA, information in agency records may be withheld if it is specifically exempted from disclosure by a statute, provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding, or refers to particular types of matters to be withheld." Section 1104 of the Federal Aviation Act (49 U.S.C. 1504), is exactly the type of statute to which Exemption 3 refers, because Section 1104 requires that information be

withheld by the DOT if its release would "adversely effect the competitive position of any carrier in foreign air transportation." As set forth above, the data would have exactly this adverse effect.

6. Under Exemption 4 of the FOIA (5 U.S.C. 552(b) (4)), information in agency records may be withheld that is "commercial or financial information obtained from a person and privileged or confidential." As set forth above, these data are of precisely this nature. See National Parks and Conservation Association v. Morton 498 F. 2d 765, 769 (D.C. Cir. 1974).

WHEREFORE, Colgan respectfully moves that the Department of Transportation withhold the attached, sealed data from public disclosure for a period of ten (10) years pursuant to Rule 39 of the Department of Transportation's Rules of Practice, and grant such other further relief as may be deemed just and necessary.

Respectfully submitted,

/s/ Paul M. Lopez

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